

Service Date: August 7, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF MARK J. FOURNIER,	)	TRANSPORTATION DIVISION
dba R&B LIMOUSINE SERVICE,	)	
Hamilton, Montana, Application for a Montana	)	DOCKET NO. T-03.3.PCN
Intrastate Certificate of Public Convenience	)	
and Necessity	)	ORDER NO. 6537

FINAL ORDER

INTRODUCTION

1. On January 17, 2003, Mark J. Fournier, dba R&B Limousine Service (Fournier), Hamilton, Montana, filed before the Public Service Commission (PSC) an application for motor carrier authority to transport passengers. The authority Fournier requests is Class B authority, passengers in limousine service between all points and places in Missoula and Ravalli counties, Montana, and between all points and places in Missoula and Ravalli counties to all points and places in Montana and return. Hearing on Fournier's application was held May 15, 2003, in Hamilton. Fournier appeared at hearing. Protestant Valet Limousine, Inc. (Valet), appeared at hearing.

2. Evidence has been taken, the matter has been fully considered, and the requested authority is GRANTED, for the reasons expressed in the following findings of fact and conclusions of law.

FINDINGS OF FACT

3. All introductory statements which can properly be considered findings of fact and which should be considered as such to preserve the integrity of this order are incorporated herein as findings of fact.

4. Fournier intends to operate limousine service in Missoula and Ravalli counties, Montana, and from Missoula and Ravalli counties to all points and places in Montana and return. Fournier proposes service without limit in number of passengers. Fournier presently owns at least one limousine which is capable of transporting fourteen passengers. Valet holds one or more motor carrier authorities for the proposed service area, in whole or in part. Valet's competing authorities are limited to eight passengers or less.

5. Fournier established that he is fit, willing, and able to provide the proposed service. There is no contest regarding this. Witnesses supporting need for Fournier's proposed service provided sufficient evidence on the need for limousine service with vehicle capacity above eight passengers. One or more witnesses testified that the existing limousine service is not capable of transporting enough passengers and the alternative high-capacity charter buses are too large. One or more witnesses testified that splitting groups to travel in two smaller limousines is not acceptable. Valet testified regarding harm to its existing operations, but the harm demonstrated was minimal and not contrary to the public interest.

6. There is a public need for the service proposed by Fournier. The existing carrier cannot meet that need. The grant of this additional authority will not harm the existing carrier contrary to the public interest. Fournier has established that he is fit, willing, and able to provide the service.

#### CONCLUSIONS OF LAW

7. All findings of fact which can properly be considered conclusions of law and which should be considered as such to preserve the integrity of this order are incorporated herein as conclusions of law.

8. The PSC has jurisdiction over applications for motor carrier authority pursuant to Title 69, Chapter 12, MCA. The application of Fournier is proper in form

and was properly noticed, protested, and heard in accordance with Title 69, Chapter 12, MCA, and Title 2, Chapter 4, MCA (Montana Administrative Procedures Act). The PSC regulates motor carriers pursuant to Title 69, Ch. 12, MCA. A part of that regulation includes control over entry of additional carriers. Fournier is an additional carrier.

9. The merits of Fournier's case turn on the elements of public convenience and necessity. The PSC will generally grant motor carrier authority when the "public convenience and necessity" requires authorization of the service proposed. In this regard, § 69-12-323(2), MCA, provides:

(a) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

10. Additionally, § 69-12-415, MCA, provides that an authority may not be issued (or remain in force) unless the holder is fit, willing, and able to perform the service authorized and conforms to applicable legal requirements.

11. As the above statutes reflect, there are specific elements involved in reaching a determination on whether public convenience and necessity requires authority. Public convenience and necessity will be deemed as requiring a grant of

intrastate motor carrier authority in Montana when each of the required elements demonstrate that authority should be granted. Matter of Jones Brothers Trucking, Inc., PSC Docket No. T-9469, Order No. 5987a, p. 8 (July 17, 1990), includes a narrative statement of the required elements (the elements have been described in numerous other PSC opinions, sometimes in slightly different ways, but all the same in substance):

Applying this language [sec. 69-12-323(2), MCA] to the facts presented by any application for authority, the Commission has traditionally undertaken the following analysis: First, it asks whether the Applicant has demonstrated that there is a public need for the proposed services. If the Applicant has not demonstrated public need then the application is denied and there is no further inquiry. Second, if the Applicant has demonstrated a public need for the proposed service, then the Commission asks whether existing carriers can and will meet that need. If demonstrated public need can be met as well by existing carriers as by an Applicant, then, as a general rule, an application for additional authority will be denied. Third, once it is clear that there is public need that cannot be met as well by existing carriers, the Commission asks whether a grant of additional authority will harm the operations of existing carriers contrary to the public interest. If the answer is yes, then the application for new authority will be denied. If the answer is no, then the application will be granted, assuming the Commission determines the Applicant fit to provide the proposed service.

12. The "fit, willing, and able" language of Section 69-12-415, MCA, was enacted subsequent to the opinion in Jones Brothers. However, as the quote from Jones Brothers indicates, the PSC has historically treated fitness as an element.

13. In accordance with the above, the PSC will grant additional authority when the following elements exist: (a) there is a public need; (b) existing carriers cannot meet that need; (c) additional authority will not harm existing carriers contrary to the public interest; and (d) the applicant is fit, willing, and able to provide the proposed

services. The PSC determines the required elements exist regarding Fournier's application.

14. The first element to consider in determining whether public convenience and necessity requires a grant is public need. In regard to public need, Fournier presented shippers supportive of the authority applied for. Witnesses supporting Fournier's authority established a need for limousine service allowing more passengers than is currently available. The PSC concludes that a need exists for motor carrier authority to accommodate the interest expressed.

15. The second element in public convenience and necessity is ability of existing carriers to meet the demonstrated public need. Valet does not have authority to transport more than eight passengers.

16. The third element is harm to existing carriers. The PSC concludes that the extent of any adverse impact on Valet is minimal. In addition, harm can exist so long as it is not contrary to the public interest and, in this case, the PSC concludes that the public interest is better served allowing Fournier to obtain authority.

17. The fourth element is fitness. An applicant for motor carrier authority must establish that it is fit, willing, and able to provide the services proposed. See, Section 69-12-415, MCA. Fournier has established this. Fournier is familiar with proposed transportation operations and is familiar with the requirements of safe operations and other responsibilities to passengers.

#### ORDER

18. All conclusions of law which can properly be considered an order and which should be considered as such to preserve the integrity of this order are incorporated herein as an order.

19. All pending objections, motions, and arguments not specifically having been ruled on in this order (if any) shall be deemed denied, to the extent that such

denial is consistent with this order.

IT IS HEREBY ORDERED the application of Mark J. Fournier, dba R&B Limousine Service, Hamilton, Montana, is GRANTED, as follows:

Class B -- passengers in limousine service (1) between all points and places in Missoula County and Ravalli County, Montana, and (2) between all points and places in Missoula County and Ravalli County to all points and places in Montana and return.

Done and dated this 15th day of July, 2003, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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BOB ROWE, Chairman

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THOMAS J. SCHNEIDER, Vice-Chairman

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MATT BRAINARD, Commissioner  
and Hearings Examiner

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GREG JERGESON, Commissioner

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JAY STOVALL, Commissioner

ATTEST:

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Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Final Order No. 6537 issued in Docket T-03.3.PCN in the matter of the application of Mark J. Fournier dba R & B Limousine, Hamilton, Montana has today been sent to all parties listed.

MAILING DATE: August 7, 2003

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FOR THE COMMISSION

FIRST CLASS MAIL

Mark J. Fournier  
dba R & B Limousine Service  
483 Dutchhill Road  
Hamilton, MT 59840

Valet Limousine, Inc.  
3820 South 3<sup>rd</sup> West  
Missoula, MT 59807

Adam, Inc.  
dba Wildhorse Limousine & Carriage Co.  
704 Sixth Avenue West  
Kalispell, MT 59901-5249

Victor I. Pizzola  
dba Valley Taxi  
361 Rummel Lane  
Hamilton, MT 59840

James F. Cole  
dba Montana Luxury Limo Service  
740 32 Avenue NE  
Great Falls, MT 59404

AS ITS INTERESTS MAY APPEAR:

Montana Consumer Counsel  
616 Helena Avenue  
P.O. Box 201703  
Helena, MT 59620-1703